THE INHERENT LIMITATION OF THE PUBLIC SERVICE DUTY TO PARTICULAR CLASSES.

I.

IT is ordinarily said that those who have undertaken a public service owe a duty to the public in general, whatever may be their inclinations. But it will be found upon inquiry that in the case of every public calling service is legally due to persons belonging to a special class, and not to every member of the public, as such. This is the inevitable consequence of the elementary principles as to the essential nature of public employment and the necessary scope of public profession. By these fundamental rules an employment is held public in its nature only in so far as it is affected with a public interest and only to the extent that it has been undertaken. Both that public interest and that public profession must coexist in order that there may be a public duty in particular cases. That being so, it is natural to find that in most public callings either the real necessity is confined to a certain class or the undertaking assumed has been solely toward a special class. It is to that extent and to them that the public duty is therefore established. There have already been examples enough of limitations of this sort in adjudicated cases to make this matter sufficiently plain.

II.

From ancient times it has been recognized that in certain public employments the public duty is owed only to travelers. It is only as to dealings with travelers that these callings are affected with a public interest. Those who offer necessary services, protection or transportation, to wayfarers and travelers always have the upper hand. Their monopoly is temporary, but it is effectual. These very same persons, in offering their services to the local population or under other circumstances have no monopoly at all. There is every reason, therefore, why innkeepers should be bound to entertain weary

wayfarers, and why carriers of passengers must take up travelers bound their way, but no reason why this duty should be pressed beyond these particular classes. But as all within the class, being similarly circumstanced, have practically the same need, it should not be open to those who must conduct these services with due regard to the needs of the public to restrict further their obligations. Thus the suggestion in one case [1] that an innkeeper might confine his obligation to those who might come in their carriages, or in another [2] that travelers belonging to an unpopular race might be excluded, are both inconsistent with the public duty which is owed to all travelers without regard to station or condition.

The inn is established for travelers, and it is such persons only who are the necessary objects of the law's solicitude. One who is not a traveler does not need the inn to protect him, for he can provide himself a lodging for that purpose. The public duty of the innkeeper is therefore owed to travelers only, and no one who is not a traveler can demand to be received at an inn. There is not even a *primâ facie* duty owed to persons generally who apply for entertainment at an inn, as appears in one of the early cases [3] where an indictment against an innkeeper for turning a man away was quashed for not saying he was a traveler.

"Common inns," says Lord Coke in a characteristic passage, "are instituted for passengers and wayfaring men; for the Latin word for an inn is *diversorium*, because he who lodges there is *quasi divertens se a via;* and so *diversoriolum*. And therefore if a neighbor, who is no traveler, as a friend, at the request of the innholder lodges there, and his goods be stolen, etc., he shall not have an action; for the writ is *ad hospitandos homines, etc., transeuntes in eisdem hospitantes.*" [4]

That the business which the carrier of passengers undertakes is the transportation of travelers is so obvious that there are but a few cases which directly state it.[5] The necessary thing is that those upon a journey should be speeded on their way. And the carrier of passengers does not undertake any other service than the transportation of travelers. He is not bound to furnish the use of his facilities

[1] Johnson *v.* Midland Ry. Co., 4 Exch. 367, 371 (1849).
[2] State *v.* Steele, 106 N. C. 766, 770 (1890).
[3] Rex *v.* Luellin, 12 Mod. 445 (1700).
[4] Calye's Case, 8 Coke 202 (1584).
[5] Jencks *v.* Coleman, 2 Sumn. 221 (1835).

to carry one for any purpose other than transportation. In order to demand carriage one must be desirous of reaching his destination. Therefore one has no right to demand carriage for the purpose of selling "books, papers, or articles of food, or in the business of receiving and distributing parcels or baggage, nor to permit the transaction of this business in their vehicles, when it interferes with their own interests." [1]

III.

One who is making a very short journey may demand transportation as a traveler; however short the distance the passenger may be taking, the carrier is liable as such.[2] Certainly under the modern decisions a man need not be at the time engaged upon a journey of any considerable length in order to be in a position to demand admission to an inn as a traveler.[3] Notwithstanding some *dicta* [4] it is entirely possible for a resident of the same locality to be considered a traveler. Where, for instance, a man on his way from his city office to his suburban home stopped at an inn to get dinner, he was held to be a traveler.[5] Justice Kennedy said in that case: "It does not seem to me to make any difference whether his journey be a long or a short one." It has been held that a man who takes a walk and just before reaching home goes into an inn to get a drink is not a traveler, and cannot demand it; [6] but if in the course of a long walk for pleasure he stops on his way for refreshment at an inn, he is entitled to be entertained; for he is none the less a traveler because the purpose of his journey is merely pleasure.[7]

The determination of the question whether one who is staying at an inn is a guest or a boarder may depend upon whether the person is a resident of the town or a stranger. So a foreigner visiting the country and staying for a considerable time at a hotel was held a guest,[8] and a resident of another town, visiting the town where the

[1] Quoted from The D. R. Martin, 11 Blatch. 233 (1873). See also Burgess *v.* Clements, 4 Maule & S. 306 (1815).

[2] Parmelee *v.* Lowitz, 74 Ill. 116 (1874).

[3] Atkinson *v.* Sellers, 5 C. B. N. S. 442 (1858).

[4] Carr's Case, 1 Roll. Abr. 3, pl. 4 (1583).

[5] Orchard *v.* Bush (1898), 2 Q. B. 284, 289.

[6] Murphy *v.* Innes, 11 So. Australia 56 (1877).

[7] Taylor *v.* Humphreys, 30 L. J. M. C. 242 (1861).

[8] Metzger *v.* Schnabel, 23 N. Y. Misc. 698.

inn was situated for business purposes merely, was held to be a guest.[1] On the other hand, an employee of a railroad, making his regular trips, and stopping over at each end of his route at the hotel, where he rents a room by the month, is not a guest. He is, as the court said, "a citizen of the community at both ends of the route."[2] So where a man breaks up his home and goes to a hotel in the same town, he is a boarder.[3] But in a leading New York case[4] the family of an army officer stationed at a nearby post were held to be guests of the hotel at which they remained for several months, on the ground that they would follow him whenever he might be ordered elsewhere. Where a man sent his family to an inn in a distant city and they remained there for several months, while he made them an occasional short visit, his family were boarders and he was a guest.[5]

One may thus remain a traveler for a long time. Thus in one Year Book case the weary suitor who followed the royal court from sitting to sitting, his hopes long deferred, was said to be still a traveler. But after a considerable lapse of time one almost inevitably becomes a resident; and as he has no longer a right to demand entertainment the innkeeper may exclude him.[6] In a recent English case of this sort where a woman had remained at a hotel as a resort for about ten months, it was held that she could be ejected. Lord Esher applying this test: "The question whether a person has ceased to be a traveler seems to me again to be a question of fact, and mere length of residence is not decisive of the matter, because there may be circumstances which show that the length of stay does not prevent the guest being a traveler, as, for instance, where it arises from illness; but it is wrong to say that length of time is not one of the circumstances to be taken into account in determining whether the guest has retained his character of traveler."

IV.

While the duty of the carrier to receive passengers for carriage extends only to travelers, he owes an incidental duty to certain other

[1] Beale *v.* Posey, 72 Ala. 323 (1882).
[2] Horner *v.* Harvey, 3 N. Mex. 197.
[3] Meacham *v.* Galloway, 102 Tenn. 415 (1899).
[4] Hancock *v.* Rand, 94 N. Y. 1.
[5] Lusk *v.* Belote, 22 Minn. 468 (1876).
[6] Lamond *v.* Richard, [1897] 1 Q. B. 541.

persons whose purpose in coming to the carrier is connected with transportation of passengers or goods though they do not present themselves as travelers. Thus a carrier must, it would seem, admit a person who comes to make an inquiry about trains or to ask for a time-table.[1] So he must admit to his premises a person coming to a train to mail a letter.[2] And so one is entitled to admission to the premises of a carrier who comes to look for freight which is expected to arrive,[3] or to help unload freight which has arrived.[4] Upon similar principles one may properly enter an inn to inquire its terms or to ask for mail addressed to him.[5]

A person who desires shelter merely is not one whom the carrier of passengers is bound to serve; and it may, therefore, decline to receive such a person on its premises. Loafers have no rights upon a carrier's premises. A railroad company is not bound to keep open its station after the last train has left in order to shelter an intending passenger who, having missed his train, is now waiting for a street car.[6] Similarly one who is not a guest, or intending immediately to become a guest, has, generally speaking, no right to enter or remain in the inn against the objection of the innkeeper.[7]

V.

It is well agreed that the carrier of passengers is under a duty to receive persons who come to help passengers in some way. Thus a hackman who comes to a station to bring a passenger is entitled to a proper reception.[8] A common case of this sort is that of a person who comes to the carrier's premises in order to assist a passenger on board or to bid him good-bye. Such a person, though not a passenger, is entitled to demand of a carrier that he be admitted to the station; and he may even, in order to assist a passenger, demand admittance to a train, at least until the carrier furnishes proper assistance.[9] Similarly the carrier is bound to admit to his premises one

[1] Bradford *v.* Boston & M. R. R., 160 Mass. 392 (1894).

[2] Hale *v.* Grand Trunk R. R., 60 Vt. 605 (1888).

[3] Toledo, W. & W. Ry. *v.* Grush, 67 Ill. 262 (1873).

[4] Holmes *v.* North Eastern Ry., L. R. 4 Ex. 254 (1869).

[5] Strauss *v.* County Hotel & W. Co., 12 Q. B. D. 27 (1883).

[6] Heinlein *v.* Boston & P. R. R., 147 Mass. 136 (1888).

[7] Commonwealth *v.* Mitchell, 2 Parsons (Pa.) 431 (1850).

[8] Tobin *v.* Portland, S. & P. R. R., 59 Me. 183 (1871).

[9] Evansville & T. H. R. R. Co. *v.* Athon, 6 Ind. App. 295 (1893); Louisville, etc. R. Co. *v.* Crunk, 119 Ind. 542 (1889); Galloway *v.* Chicago, etc. R. Co., 87 Iowa

who comes to meet an arriving passenger.[1] Thus where a man who had come to a railway station to meet his wife was injured by a defect in the premises, he was held entitled to compensation. The railway, the court said, was bound to keep its premises in safe condition for its customers, and the injured person was a customer.[2] Mr. Chief Justice Graves said: "Had his errand been to receive a bale of goods or a horse, no one would doubt that he had all the rights of a customer, and it seems little less than preposterous to contend that the right was not simply different or inferior, but absolutely wanting, because it was his wife that he went for."

Similar in principle are those cases where a stranger may desire to enter the inn, not merely for his own pleasure but because the convenience of a guest of the inn calls him there. While no right to enter the inn can be based on his own claim, he can under certain circumstances claim to be exercising a right of the guest. Where such is the case it would seem that his right to admittance is as clear as the right of a guest. It must be borne in mind, however, that in order to show a right of admittance he must base his claim on a right of the guest whom he comes to see. In the ordinary case it is tolerably clear that a stranger who comes by appointment to do business with a guest has a right to be admitted. "It is conceded," said Parker, J., in Markham *v.* Brown,[3] that he may be bound to permit the entry of persons who have been sent for by the guest."

The same distinctions apply to persons coming to railroad stations; it is only so far as the interest of the passenger requires it that this service can be demanded of the carrier. Thus when a person came to a station out of curiosity, in order to see the President of the United States, who was a passenger on a passing train, the

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458 (1893); Lucas *v.* Taunton & N. B. R. R., 6 Gray 64 (1856), *semble;* Doss *v.* Missouri K. & T. Ry. Co., 59 Mo. 27 (1875); Rott *v.* Forty-second St., etc. Ferry R. Co., 56 N. Y. Super. Ct. 151 (1888); Dunne *v.* N. Y., N. H. & H. R. R. Co., 99 App. Div. 571 (1904); Morrow *v.* Atlanta, etc. A. L. Ry. Co., 134 N. C. 92 (1903); Johnson *v.* So. R. Co., 53 S. C. 203 (1898); Izlar *v.* Manchester & A. R. R. Co., 57 S. C. 332 (1899); Gulf, etc. Ry. Co. *v.* Williams, 21 Tex. Civ. App. 469 (1899); Hamilton *v.* Texas R., 64 Tex. 251 (1855); Texas & P. Ry. *v.* Best, 66 Tex. 116 (1886); Houston & T. C. R. R. Co. *v.* Phillio, 96 Tex. 18 (1902); Dowd *v.* Chicago, M. & St. P. Ry. Co., 84 Wis. 105 (1893), *semble.*

[1] McKone *v.* Michigan C. R. R., 51 Mich. 601 (1883); Missouri, K. & T. Ry. *v.* Miller, 8 Tex. Civ. App. 241 (1894).

[2] McKone *v.* Michigan C. R. R., *supra.*

[3] 8 N. H. 523 (1837).

carrier owed him no duty.[1] "The plaintiff was on the spot merely to enjoy himself, to gratify his curiosity, or to give vent to his patriotic feelings. The defendant had nothing to do with that." A similar case was one where one boarded a train to speak with an acquaintance and was injured under circumstances which would have shown liability if the plaintiff had been a passenger. But it was held that the defendant company owed such a person no duty of that sort, since he was not upon the train in connection with any duty which the carrier owed the passenger.[2]

VI.

It is clear therefore that the innkeeper and the carrier owe no duty whatever to give shelter and protection to the public in general. It is only to such wayfarers and travelers who apply as guests and passengers that it must undertake those extraordinary responsibilities which the law imposes in that behalf. Even those persons just described who are attending and assisting guests and passengers form an intermediate class. That such persons are not guests or passengers is clear, but they are, in the language of the cases, "customers," and are entitled to safe and properly lighted premises.[3] But they are not entitled to the active protection which is due to passengers. Thus, while waiting in a station for a train, in order to meet a passenger, such a person is not entitled to protection against the assault of a stranger.[4]

Where the person actually gets on board the train, assisting a passenger, and the train starts without giving him time to alight safely, the question whether the carrier has been guilty of a breach

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[1] Gillis *v.* Pennsylvania R. R., 59 Pa. 129 (1868).

[2] Bullock *v.* Houston & T. C. Ry., 55 S. W. 184 (Tex. Civ. App. 1900). The same law applies if one having assisted a person on board returns later to talk with him. St. Louis, I. M. & S. Ry. Co. *v.* Tomlinson, 69 Ark. 489 (1901).

[3] Ill. Cent. R. Co. *v.* Griffin, 80 Fed. 278 (1897); Georgia Ry., etc. Co. *v.* Richmond, 98 Ga. 495 (1896); Toledo, W. & W. Ry. *v.* Grush, 67 Ill. 262 (1873); Tobin *v.* Portland, S. & P. R. R., 59 Me. 183 (1871); Bradford *v.* Boston & M. R. R., 160 Mass. 392 (1894); McKone *v.* Michigan C. R. R., 51 Mich. 601 (1883); Union Pac. R. Co. *v.* Evans, 52 Neb. 50 (1897); Hauk *v.* N. Y., etc. R. Co., 34 N. Y. App. Div. 434 (1898); Hamilton *v.* Texas & P. Ry., 64 Tex. 251 (1855); Missouri, K. & T. Ry. *v.* Miller, 8 Tex. Civ. App. 241 (1894); Hale *v.* Grand Trunk R. R., 60 Vt. 605 (1888); Holmes *v.* North Eastern Ry., L. R. 4 Ex. 254 (1869).

[4] Houston & T. C. R. R. Co. *v.* Phillio, 96 Tex. 18 (1902).

of duty is a difficult one. One or two cases are clear enough. If the conductor has no notice that the assistant was on the train, and the train stops the usual and reasonable time, the carrier has sufficiently performed its duty.[1] "In order to place upon the company the duty of holding the train specially for him to disembark, he must have given notice of his intention." But if the conductor had notice that the assistant was on the train, the carrier must give him a reasonable time to alight.[2] Even if the conductor does not know of the presence of the assistant, there is good authority for holding the carrier if the train starts without giving him a reasonable time to alight after notice that the train was about to start.[3] This would not be "such ordinary care as the defendant was bound to exercise both toward passengers and persons in the situation of plaintiff."

VII.

In several of the public services the undertaking is limited to the occupiers of the premises. The water companies, the gas companies, the electric companies, and the telephone companies which undertake to distribute their product or perform their service generally throughout the city, do not undertake to serve every person as such. Their services are peculiarly necessary in connection with the use of buildings, and their obligation is properly held to be limited to occupiers of the premises by the general character of their customary undertaking.

One of the most interesting of the comparatively few cases upon the question of the classes of persons who can demand supply from such service companies arose recently in New Jersey.[4] This was a dispute between the Public Service Corporation, which was engaged in the supply of gas to Jersey City, and the American Lighting Company, the proprietor of peculiar burners. The Public Service

[1] The quotation following is from Missouri, K. & T. Ry. *v.* Miller, 8 Tex. Civ. 241 (1894). See also Coleman *v.* Georgia R. R., 84 Ga. 1 (1889); Hill *v.* Louisville & N. R. R., 124 Ga. 243 (1905); Griswold *v.* Chicago & N. W. Ry., 64 Wis. 652 (1885).

[2] Doss *v.* Missouri, K. & T. Ry., 59 Mo. 27 (1875). See also Louisville & N. R. R. *v.* Crunk, 119 Ind. 542 (1889); Johnson *v.* Southern Ry., 53 S. C. 203 (1898).

But see to the contrary, McLaren *v.* Atlanta & W. P. R. Co., 85 Ga. 504 (1890).

[3] Lucas *v.* New Bedford & T. R. R., 6 Gray (Mass.) 64 (1856).

[4] Public Service Corporation *v.* American Lighting Co., 67 N. J. Eq. 122 (1904). See also American Lighting Co. *v.* Public Service Corp., 132 Fed. 794 (1904).

Company had for a long time been lighting the streets of Jersey City upon the basis of annual contract. At the bidding of 1903, the American Lighting Company came in with the lowest bid; and the lighting was accordingly let to it. Thereupon it demanded that the Public Service Corporation should supply to it at the end of the pipe at the top of every lamp-post in Jersey City, enough gas to run the lamp at the regular rate for measured gas as supplied to householders generally in Jersey City. Vice-Chancellor Pitney disposed of this case upon a number of points, one of them being this:

"I am entirely of the opinion that the defendant, the lighting company, has no standing whatever, in its own right, to demand from the complainants a supply of gas. For the simple reason, above stated, that it is neither a householder nor a resident of Jersey City, and the obligation which is imposed upon complainants by reason of their enjoyment of a public franchise of laying mains in the streets, to furnish gas, extends only to residential citizens of the city and to the municipality. It is quite absurd to say that any person who might happen to be walking along the street and yet be destitute of any local habitation within the corporate limits of Jersey City has the least right to demand a supply of gas from the complainants." [1]

It is common knowledge that as the modern telephone system is managed, one of the services offered is to subscribers at their residence. This being so, a telephone company cannot refuse to take on an applicant for house service even if it is shown that there is a pay-station, open to the public in general, near by. Still less could a telephone company do what it attempted to do in one case,[2] insist that an occupier should be content with a pay-station. As the court said:

"To conduct the business of the telephone by public telephone stations, and sending messengers to notify persons with whom a patron of the company desires to converse in other parts of the city; to compel the persons desiring to converse with others to remain at the public telephone station until the persons with whom they desire to converse can be notified, and so arrange their business as to leave and go to another telephone station and hold the conversation, — renders the use of the telephone almost worthless. It is by reason of the fact that business men can have

[1] In Provident Inst. for Savings *v.* Allen, 37 N. J. Eq. 36 (1883), it was held that water rates cannot be assessed against vacant lots.

[2] Central Union Telephone Co. *v.* State, 118 Ind. 194 (1888).

them in their offices and residences, and, without leaving their houses or their places of business, call up another at a great distance, with whom they have important business, and converse, without the loss of valuable time on the part of either, that the telephone is particularly valuable as an instrument of commerce."

VIII.

According to this analysis the occupiers of every house within the territory served have the right to be supplied. The exact nature of this duty is well set forth in a leading case [2] where the relator, a tenant of a building, was refused service by the water company upon the ground that the company had decided that it would deal only with the owners of premises. But the court — Mr. Justice Hunt writing the opinion — held that the tenant must be served:

"The relator is an inhabitant of Butte, occupying premises wholly without water for general use, and there are no other means by which water for his house may be secured, except from the appellant corporation. Ought the appellant to be allowed to refuse his tender for water in advance, and to refuse him water, upon the ground that, 'by virtue of its rules and regulations adopted, it can deal only with the owners of the property requiring water to be turned on, or the agents of said owners'? We say not. It has no power to abridge the obligations, assumed by it in accepting its franchise, to supply an inhabitant of Butte with water, if he pays them for it in advance, and is a tenant in the possession and occupancy of a house, in need of water for general purposes." [3]

In accordance with this doctrine the owner of the premises has no standing to complain of the refusal to supply his tenant.[4] It follows that the owner of the premises cannot be held liable for the bills of his tenant,[5] nor can his premises be subjected to any lien for such charges.[6] And, similarly, a new tenant cannot be affected by the

[1] *Accord.*, Central Union Telephone Co. *v.* State, 123 Ind. 113 (1889).

[2] State *v.* Butte City Water Co., 18 Mont. 199 (1896).

[3] The following cases, among others, involve the doctrine that the duty is primarily owed to the occupier: McCrary *v.* Beaudry, 67 Cal. 120 (1885); McCarthy *v.* Humphrey, 105 Iowa 535 (1898); Vanderberg *v.* Gas Co., 126 Mo. App. 600 (1907); Jones *v.* Rochester Gas & El. Co., 168 N. Y. 65 (1901).

[4] Brass *v.* Rathbone, 153 N. Y. 435 (1897). See also Stein *v.* McArdle, 24 Ala. 344 (1854).

[5] McCarthy *v.* Humphrey, 105 Iowa, 535 (1898).

[6] Turner *v.* Revere Water Co. 171 Mass. 329 (1898).

arrears of a prior tenant.[1] This is all good common-law doctrine; but it may be, and sometimes is, altered by the legislature by general statute or by provision in particular charters.[2] Such legislation is not unconstitutional as subjecting one person to the debts of another.[3] In meeting this contention the Minnesota court said recently:

"The theory of the charter is that the obligation on the part of the owner rests upon contract, which is implied by the fact that he connects his premises with the c ty water or electric light system and permits the occupant to use the same. It is quite as reasonable to require the owner of the premises to respond personally for the debts incurred by his lessee for electric light and water rent as to subject his premises to a lien and sale."[4]

The decision that a tenant, as such, is entitled to demand service does not altogether exclude the landlord from consideration.[5] He has such interest in the supply of the premises that it would seem that he could frame an action for injury to his interest by refusal of the company to furnish a supply to them. On some such ground as that the legislation making the owner liable for supply to his premises may better be justified than in any other way.[6] A mortgagee in possession has of course the same rights as an occupier to complain of refusal to give service; but it has been held that even a mortgagee out of possession may maintain an action for depreciation of his security by a refusal of service to his mortgagor.[7] Of course if the mortgagor is in possession he is the one entitled to service.[8]

IX.

The primary duty is thus to the occupier of premises as such; and the curtilage therefore is the unit. The company may insist

[1] Gaslight Co. *v.* Colliday, 25 Md. 1 (1866).

[2] Kelsey *v.* Fire & Water Commissioners, 113 Mich. 215 (1897); Jersey City *v.* Morris Canal & C. Co., 41 N. J. L. 66 (1879).

[3] East Grand Forks *v.* Luck, 97 Minn. 373 (1906).

[4] Lien with possible sale was held constitutional in United States Provident Institution for Savings *v.* Jersey City, 113 U. S. 506 (1885); Wagner *v.* Rock Island, 146 Ill. 139 (1893).

[5] Dayton *v.* Quigley, 29 N. J. Eq. 77 (1878).

[6] See Pallett *v.* Murphy, 131 Cal. 192 (1900).

[7] Equitable Securities Co. *v.* Montrose & D. Canal Co., 20 Colo. App. 465 (1905).

[8] Mabb *v.* Stewart, 133 Cal. 556 (1901).

upon this as well as the applicant. Thus in one leading case [1] the United States as owner of a military reservation at Fort Omaha demanded that all the water supplied should be sold at wholesale rates through one meter. But the court held that the company could insist upon supplying each building separately, saying that this was the nature of their undertaking. There are, however, some instances of service arranged for a group as a unit, which, it is held, will conclude the parties to the arrangement if any of them are later dissatisfied.[2]

It is of interest to see how the problem is handled in accordance with these principles when the basis of supply to a building occupied by several groups of persons is brought in question. If there are various persons occupying the premises, but no separation of the tenancy, the premises must be considered as an entirety. A single charge may then be made for all; one lodger cannot demand separate rating when the premises are used to some extent in common with a single system of piping.[3] It may be added that where the statute permits the charging of the service against the owner the whole may be billed to him, leaving him to deal with his tenants as he sees fit.[4] But generally where the building is divided into separate tenements, there being separate lessees of these apartments, a different situation is presented. Even then it is not the duty of the supplying company to provide rising pipes to each apartment and a meter for the supply at each. As a theoretical matter the profession of the supplying company, a gas company or a water company for example, ends at the cellar wall by its usual practice. Moreover, as a practical matter, the existence of public pipes within the house structure would give too great an opportunity for stealing by tapping the pipes.[5] The proper method for application by a tenant who desires a supply is by bringing his own service pipes to the cellar wall and there requesting that a supply be handed over to him.[6] These difficulties doubtless do not apply to electric supply

[1] United States *v.* American Water Works Co., 37 Fed. 747 (1889). Compare Haugen *v.* Albina L. & Water Co., 21 Ore. 411 (1891).

[2] Helphery *v.* Perrault, 12 Ida. 451 (1906); Mulrooney *v.* Obear, 171 Mo. 613 (1903).

[3] Birmingham *v.* Birmingham Water Works Co., 152 Ala. 306 (1906). See also Frothingham *v.* Bensen, 20 N. Y. Misc. 132 (1897).

[4] Kelsey *v.* Board of Fire & Water Commissioners, 113 Mich. 215 (1897).

[5] Ferguson *v.* Metropolitan Gas Co., 37 How. Pr. 189 (1868).

[6] The lessee of two tenements is not liable for supply to his sub-lessee in one. Young *v.* Boston, 104 Mass. 95 (1870).

or telephone service, unless perhaps when the wires are under ground; for when the wires are overhead they may be brought directly to the outer wall of the apartment.

X.

As has just been seen, special limitations upon the extent of the particular employment may be justified by the situation with regard to the service in question. This is certainly true when those who may demand service are plainly limited by external forces. Where it is true that only a certain class can be in a position to demand service the propriety of confining service to that class is obvious. These external limitations may be of various sorts, as will be seen. The service in question may be so dependent upon another service that it may only deal with those who have been first accepted by this other service. Or the service in question may be available only to those who have first acquired a legal right entitling them to this service. An illustration of each of these two possibilities will bring this out.

The public profession and proper obligation of a sleeping car or parlor car company is subject to this sort of limitation. Its services are tendered, not to all persons who may desire shelter or protection but only to passengers on the train to which they are attached, and indeed only to such passengers as the carrier permits to ride in the cars of the company. As Mr. Justice Devens said, in Lawrence *v.* Pullman Palace Car Company:[1]

"The defendant company could not certainly furnish a berth in its cars until the person requesting it had become entitled to transportation by the railroad company as a passenger, and he must also be entitled to the transportation for such routes, distances, or under such circumstances, as the railroad company should determine to be those under which the defendant company would be authorized to furnish him with its accommodations. The defendant company could only contract with a passenger when he was of such a class that the railroad company permitted the contract to be made."[2]

Legal limitation is the true explanation of the restricted obligation attributed to the wire conduit companies by the few cases which

[1] 144 Mass. 1 (1887).

[2] Lemon *v.* Pullman P. C. Co., 52 Fed. 262 (1887); Pullman P. C. Co. *v.* Lee, 49 Ill. App. 75 (1892).

deal with this modern instance. It is held as to them that they are only bound to admit the wires of such companies as have received proper franchise from the public authorities to engage in their business along the streets in which the conduit is run.[1] This "lawful power" is a condition prerequisite, otherwise the various companies might foist themselves upon the city without its consent.[2]

XI.

Citations might have been multiplied upon the topics here discussed; but it is hoped that authority enough has been adduced to support the contention here put forward. It is but a half truth that those who commit themselves to a public employment are bound to serve the whole public. It is but a half truth, that the public servant may altogether decide as to the extent to which he will commit himself to public service. The real truth in this is, that by entering upon the service one comes within the law requiring him to meet the necessities of the situation, — but no more. The obligations are thus the involuntary ones of a legal status, — not the defined ones of a specific assumption.

Bruce Wyman.

CAMBRIDGE, MASS.

[1] See generally State *ex rel. v.* National Subway Co., 145 Mo. 551 (1898); West Side Electric Co. *v.* Consol. T. & E. Co., 110 N. Y. App. Div. 171 (1905).

[2] See particularly Purnell *v.* McLane, 98 Md. 589, 56 Atl. 830 (1904); *Re* Long Acre Light & Power Co., 102 N. Y. Supp. 242 (1907).